

REMARKS

Summary of Office Action

Claims 21-32 and 43-41 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Gott et al., US 2002/0071859 A1 (hereafter “GOTT”) in view of Ullmann’s Encyclopedia of Industrial Chemistry, 5th Completely Revised Edition, Vol. A17 (hereafter “ULLMANN”).

Response to Office Action

Reconsideration and withdrawal of the rejections of record are again respectfully requested in view of the following remarks.

Claims 21-32 and 43-41, i.e., all claims of record, stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over a newly cited document, i.e., GOTT, in view of ULLMANN. In this regard, the present rejection merely repeats the allegations set forth in the previous Office Action.

Regarding the Examiner’s response to the arguments set forth in the response to the previous Office Action, Applicants respectfully maintain the position that even if one were to assume, *arguendo*, that one or ordinary skill in the art would be motivated to provide the towelettes of GOTT with a surface structure and in particular, a uniform sequence of elevations and indentations, GOTT neither teaches or suggests that this assumed uniform sequence of elevations and indentations in the nonwoven material is to be produced by using water-jets. For example, GOTT does not even

mention water-jets, let alone for the purpose of providing a substrate (e.g., a nonwoven) with a surface structure.

Regarding Applicants' argument that the Examiner has not offered any explanation as to why the mentioning of "sufficient loft" in GOTT allegedly "contemplates the limitation of uniform sequence of elevation" it is stated at page 3 of the present Office Action:

Gott teaches "porosity" and "loft". Clearly, such porosity would be uniform to provide uniform drainage. Such porosity, it is argued, would read on Applicant's sequence of elevations, and indentations, especially when coupled with the teaching of "loft". The Examiner further notes that Ullmann teaches that "creping" is well known in the art to soften non-woven materials, (page 582, right hand column). Thus it would be obvious to one of ordinary skill in the art to crepe the non-woven material to soften it. Such creping provides the claimed uniform sequence of elevations and indentations.

Applicants note that with respect to the exemplary desirable substrate properties which are mentioned in paragraph [0047] of GOTT the Examiner appears have shifted the emphasis from "loft" to "porosity". At any rate, this time the Examiner has failed to explain why the alleged "uniform" porosity teaches or suggests a uniform sequence of elevations and indentations when coupled with the teaching of loft. Neither has the Examiner provided any written (or other) evidence in this regard.

Regarding the "creping" mentioned for the first time by the Examiner, it is noted that the passage at page 582 of ULLMANN (which apparently is relied on by the Examiner in this respect) states:

Compacting (Clupak process) and *crêping* (Micrex process) also serve to soften nonwovens. In the Micrex process a dry nonwoven is compacted in the gap between a rotating grooved roller and a fixed guide plate; in contrast to the Clupak process a visible "crêping" effect can be obtained.

Applicants are unable to see why in order to soften a nonwoven material one of ordinary

skill in the art would consider it obvious to replace the above Micrex process (i.e., compacting between a rotating grooved roller and a fixed guide plate) by a water-jet impression. Moreover, it is not seen that “softness” is among the exemplary desirable substrate properties which are mentioned in paragraph [0047] of GOTT, let alone in connection with a nonwoven. On the contrary, in paragraph [0047] GOTT expressly mentions the exact opposite of softness, i.e., “sufficient abrasivity”.

Regarding Applicants' arguments with respect to claim 22 (which recites, *inter alia*, that the impregnation liquid has a water content of less than 0.5 % by weight), i.e., that GOTT teaches in paragraph [0020] thereof that the cosmetic composition disclosed therein has a water content of “from about 80 to about 99%, preferably from about 85 to about 95%, optimally from about 90 to about 95% by weight”, thereby teaching away from claim 22, the Examiner alleges at pages 3/4 of the present Office Action (emphasis in original):

... Gott teaches (paragraph 20) that the water phase **may** range in an amount about 80 to 99%. That is water can be in any amount. It is noted that, in table 3, Gott discloses water at 75%, lower than the above recited range. This further suggests that water can be in lower amounts than the lower end of the above range cited. Further, Gott (paragraph 7) teaches that there is a problem with liquid formulations which do not evenly distributed over an applied surface skin. *[sic]* It is argued that this problem would suggest delivering the active in an essentially anhydrous, low viscosity vehicle.

Applicants respectfully submit that the Examiner's interpretation of the term “may” in paragraph [0020] of GOTT is clearly at odds with the disclosure of GOTT as a whole. In particular, the lower limit of about 80 % by weight of water is mentioned not only in paragraph [0020] of GOTT, but also in paragraph [0016] and, most importantly, in independent claims 1 and 9 of GOTT, thereby making it absolutely clear that the lower limit of about 80 % by weight is one of the critical

features of the invention of GOTT.

Regarding the formulations set forth in Table III of GOTT relied on by the Examiner, it is pointed out that these formulations contain not only 75 % by weight of water as “Phase A” but also water as the “balance” (see bottom of Table III). For each of these formulations this “balance” alone clearly accounts for more than 5 % by weight. Moreover, it must not be overlooked that probably a substantial portion of “Phase C”, i.e., 6% by weight of Dimethicone Microemulsion, consists of water as well. Accordingly, it is apparent that all of the formulations which are set forth in Table III of GOTT contain significantly more than 80 % by weight of water and are thus, within the range called for by the independent claims of GOTT (and probably even within one of the preferred ranges recited in paragraph [0022] thereof).

With respect to the statement in paragraph [0007] of GOTT also referred to by the Examiner in this regard, Applicants submit that this statement clearly refers to the problems of the prior art which the invention described by GOTT serves to overcome. In this regard, paragraph [0019] of GOTT may be referred to, for example.

Regarding claim 23 (which recites, *inter alia*, that the impregnation liquid is alcohol-based), Applicants respectfully maintain their position that GOTT teaches away from claim 23 as well because as set forth in detail above, the compositions of GOTT are required to contain at least about 80 % by weight of water and thus clearly cannot be alcohol-based.

The comments in the second paragraph of page 4 of the present Office Action with respect to the optional presence of fatty alcohols are noted. Even if one were to assume, *arguendo*, that a composition comprising a major portion of one or more fatty alcohols may be called “alcohol-based”, it is noted that GOTT mentions C₁₀₋₂₀ fatty alcohols only as examples of nonionic surfactants

which may optionally be present in the water-based compositions disclosed therein (see paragraph [0028] of GOTT). As is set forth in paragraph [0027] of GOTT, surfactants are present in these compositions only in amounts of up to 20 % by weight, which amounts are clearly not high enough to call a corresponding composition (fatty) alcohol-based. It further is noted that none of the exemplary compositions of GOTT contains a fatty alcohol, let alone a typical alcohol.

With respect to present claim 24 (which recites that the impregnation liquid is free of oil), it is submitted that a closer look at Example 3 of GOTT (which discloses the only exemplary composition which does not appear to contain an oil) reveals that the composition disclosed therein is not intended for use as an actual impregnation liquid for the production of a towelette (in contrast to the remaining exemplary compositions) but only as a testing liquid for evaluating the effect of viscosity on the resultant SPF value. According to paragraph [0070] of GOTT,

The evaluation was an in-vitro method. According to the method, vitro skin (N-19 topography available from MS Inc.) was cut into 7x7 cm pieces and placed into a frame. Test samples were dispensed through a micropipettor in the form of at least 100 dots of sample over a 5.5.times.5.5 cm area. Coverage of the sample was 2 $\mu\text{L}/\text{cm}^2$. By use of a finger cot, the sample was lightly spread in an even manner over full 5.5x5.5 cm area of the skin. Then it was set aside to dry at least 15 minutes. An SPF 290 Analyzer (Optometrics Group) instrument was used to measure the sun protection factor.

Accordingly, all of the (seven) exemplary compositions of GOTT which were impregnated into a substrate contained an oil, i.e., dimethicone. In view thereof, GOTT teaches away from, or at least fails to render obvious the subject matter of claim 24 as well.

Regarding present claims 34 and 35 (which recite that the nonwoven material is from 5 % to 50 % (10 % to 25 %) thicker than an identical nonwoven material which has not been water-jet

impressed) Applicants submit that GOTT fails to mention water-jets, let alone water-jet impression (and in particular, water jet impression of a nonwoven). For this reason alone, GOTT necessarily fails to render obvious the subject matter of claims 34 and 35 as well.

Applicants further submit that ULLMANN is unable to cure the various deficiencies of GOTT set forth above, and neither does the present Office Action appear to contain corresponding allegations.

It is again submitted that for at least all of the foregoing reasons and the additional reasons set forth in the response to the previous Office Action, the Examiner has failed to establish a *prima facie* case of obviousness of the subject matter of any of the present claims in view of GOTT and ULLMANN. Accordingly, withdrawal of the rejection of claims 21-32 and 43-41 under 35 U.S.C. § 103(a) over GOTT and ULLMANN is warranted and again respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is again respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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